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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,116	12/27/2001	Jakob Roelf Woltjes	294-104PCT-US	7934

7590 07/25/2003  
Ronald J. Baron  
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9 EXAMINER
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BHAT, NINA NMN

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/889,116

Applicant(s)

WOLTJES ET AL.

Examiner

N. Bhat

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1761

-- **Th MAILING DATE of this communication appears on th cover sheet with th correspondenc address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 6) <input type="checkbox"/> Other:  |

### DETAILED ACTION

1. In the specification page 1, line 1, applicant should claim benefit under 35 U.S.C. 371 of PCT/NL00/00059.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-8 and 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Whaley et al.

Whaley et al. teach a starch composition, which is used as a viscosifier and/or stabilizer in foods and can be used in dairy products or dessert products as a gelatin replacement product. Specifically Whaley et al. teach a gelatin replacement composition which includes a starch composition having a high amylose gelling starch fraction and a non-gelling viscosifying hydrocolloid. The first fraction is a high amylose gel starch fraction, which is a hydrolyzed starch or a starch, which has under gone oxidation, enzyme conversion, acid hydrolysis, heat and/or acid dextrinization for the gelling portion of the composition. The non-gelling starch fraction, which acts as a viscosifier, is a cross-linked starch, which include cross-linking agent such as phosphorus oxychloride, epichlorohydrin, sodium trimetaphosphate and adipicacetic mixed acid anhydrides. The cross-linked modified starch fraction is stabilized. [Note

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column 1, lines 54-57; Column 2, lines 10-19; Column 3, lines 19-67; Column 4, lines 1 et seq.] The hydrocolloid composition as claimed by Whaley provides a starch composition comprising a first fraction comprising a depolymerized starch and a second fraction which comprises a cross-linked starch and the composition is specifically taught as being used as a gelatin replacement composition used in dairy and confectionery applications thus fully anticipating applicant's claims.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stroud teaches a high amylose starch substituted gelatin capsule wherein a gelatin capsule sheath is partially replaced with a high amylose content starch. Gillelan et al. teach modified starch as a replacement for gelatin in soft gel film and capsules. Barrett et al. teach a chewy confectionery product, which includes oxidized starch in combination with gum arabic as a replacement for gelatin. Dorp et al. teach a gelatin replacement which includes wheat fiber gel and starch. EP 1 145 646 teaches a reversible gelling agent which includes at least 95 wt% amylopectin.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879.

The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat  
Primary Examiner  
Art Unit 1761

July 22, 2003